

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

UNITED FIRE & CASUALTY COMPANY, )  
Plaintiff, )  
v. ) Case No.: 13-3069  
HOTEL MOTEL LLC d/b/a )  
OZARK MOUNTAIN INN )  
Serve: Registered Agent )  
David L. Smith )  
115 West Atlantic )  
Branson, MO 65616 )  
Defendant. )

## **COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff United Fire & Casualty Company (hereafter "United Fire") submits its Complaint for Declaratory Judgment from this Court pursuant to 28 U.S.C. §2201 and Rule 57 of the Federal Rules of Civil Procedure as follows:

## I. THE PARTIES

1. Plaintiff United Fire is an insurer organized under the laws of Iowa, with its principal place of business located in Cedar Rapids, Iowa and is authorized to sell insurance in the State of Missouri.

2. Defendant Hotel Motel LLC d/b/a Ozark Mountain Inn (“Hotel Motel LLC”) is a Missouri limited liability company that was organized in the State of Missouri in 2007. Jai Motwani is the sole member and owner of Hotel Motel LLC, and Mr. Motwani is a citizen of Florida residing in Fort Lauderdale, Florida. Service of process may be obtained on Hotel Motel LLC through its registered agent, David L. Smith, 115 West Atlantic, Branson, Missouri 65616.

3. Hotel Motel LLC is the registered owner of the fictitious name Ozark Mountain Inn. The Ozark Mountain Inn was a hotel located at 1415 West Highway 76, Branson, Taney County, Missouri.

4. Plaintiff United Fire is an insurer that insured Hotel Motel LLC and its property known as Ozark Mountain Inn under policy number 60364026 for the policy period of August 31, 2011 to August 31, 2012.

## **II. JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over the parties under 28 U.S.C. §1332 as this action is between citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs, as more fully set forth below.

6. This Court has personal jurisdiction of Defendant because Hotel Motel LLC is a Missouri limited liability company that at all times relevant to this lawsuit owned property and was doing business in Missouri.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because this is a declaratory judgment action regarding Plaintiff's obligations under an insurance policy regarding loss to a hotel property that Defendant owned and operated in Branson, Taney County, Missouri.

## **III. FACTS**

8. Plaintiff United Fire issued policy number 60364026 to Hotel Motel LLC to provide Business Owners Coverage for Ozark Mountain Inn in Branson, Missouri ("the Policy"). The Policy was sold by an insurance agent located in Branson, Taney County, Missouri. A complete copy of the Policy is attached as Exhibit A and incorporated by reference.

9. Hotel Motel LLC is the named insured under the Policy, and the Declarations show a limit of liability of \$4,400,000.00 for damage to or loss of buildings.

10. The Declarations for the Policy indicates that coverage for buildings was issued on a replacement cost basis.

11. The "Loss Payment" section for the Policy includes the following provisions:

- (c) You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss or damage.
- (d) We will not pay on a replacement cost basis for any loss or damage:
  - (i) Until the lost or damage property is actually repaired or replaced; and
  - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

12. On or about February 29, 2012, a tornado in Branson, Missouri caused significant property damage to Ozark Mountain Inn. In the course of investigating and adjusting the loss, United Fire determined that damage from the tornado resulted in a total loss for the property.

13. Hotel Motel LLC, made a claim under the Policy for damage to the property but has not repaired or replaced the building.

14. Pursuant to the Loss Payment provisions in the Policy, United Fire tendered to Hotel Motel LLC \$2,428,483.67 for the actual cash value of the loss for the building. United Fire also tendered \$268,749.46 for damage to or loss of personal property, \$121,932.00 under the Policy's business income loss coverage, and \$14,456.70 to damage to or loss of signs, making a total of \$2,833,621.40 of payments United Fire has made to Hotel Motel LLC for the loss.

15. A dispute has arisen between United Fire and Hotel Motel LLC concerning the amount owed under the Policy for the loss. Hotel Motel LLC claims that United Fire should be liable for the full replacement cost up to the policy limit, even though it has not repaired or replaced the property.

16. Under the Policy's terms, Hotel Motel LLC only is entitled to the actual cash value of the property and is not entitled to the replacement cost since it has not repaired or replaced the building. Because Hotel Motel LLC has not repaired or replaced the Ozark Mountain Inn as a result of the loss of February 29, 2012, it is not entitled to recover the replacement cost for the building. Therefore, Plaintiff United Fire should not be liable for any further insurance benefits to Hotel Motel LLC under the Policy for the loss beyond the actual cash value that Plaintiff has tendered along with the other sums set forth above.

17. Under 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, this Court has the power to resolve questions of construction and legal relations between Plaintiff and Defendant regarding the coverage available under the Insurance Policy.

18. The question regarding the amount owed under the Policy by United Fire to Hotel Motel LLC for the loss involves an actual justiciable controversy ripe for consideration by this Court, making declaratory relief proper.

19. Therefore, United Fire seeks a declaratory judgment that it has no obligation to pay more under the Policy for the loss than it has tendered to Hotel Motel LLC.

WHEREFORE Plaintiff United Fire & Casualty Company hereby asks this Court for declaratory judgment and other relief as follows:

- a. Finding that Plaintiff United Fire & Casualty Company has no further liability under the Policy to Defendant Hotel Motel LLC for the loss beyond the actual cash value of \$2,428,483.67 that Plaintiff already has tendered for damage to or loss of the building along with the sums of \$268,749.46 for damage to or loss of personal property, \$121,932.00 under the Policy's business income loss coverage, and \$14,456.70 to damage to or loss of signs that Plaintiff has paid for the loss; and

- b. Awarding Plaintiff its costs; and
- c. Awarding Plaintiff all other relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Curtis O. Roggow

Roger W. Warren MO #38236  
Curtis O. Roggow MO #42995  
Sean P. Edwards MO #52427  
SANDERS WARREN & RUSSELL LLP  
40 Corporate Woods, Suite 1250  
9401 Indian Creek Parkway  
Overland Park, Kansas 66210  
Telephone: (913) 234-6100  
Facsimile: (913) 234-6199  
Email: [r.warren@swrllp.com](mailto:r.warren@swrllp.com)  
Email: [s.edwards@swrllp.com](mailto:s.edwards@swrllp.com)  
**ATTORNEYS FOR PLAINTIFF**  
**UNITED FIRE & CASUALTY COMPANY**